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**1994 Wis Eth Bd 4**  
LOCAL CODE; DISQUALIFICATION; EMPLOYMENT CONFLICTING  
WITH OFFICIAL DUTIES; IMPROPER USE OF OFFICE

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The Ethics Board advises that a member of a city council that is a negotiator for a labor union in other municipalities should not participate in any official discussions or vote on the Union's contract with the city on whose council the member serves; should not use any information not available to the public, derived from the council member's holding public office, to benefit the Union in other municipalities; and should not be present during closed sessions in which labor negotiations with the Union are being discussed.

OEB94-4 (August 31, 1994)

Facts

[1] This opinion is based upon these understandings:

- a. You are a city attorney.
- b. A member of the city council is a labor negotiator for a labor union in other municipalities.
- c. Certain city employees are members of the Union and are represented by the Union in labor negotiations with the city.
- d. At one time, the city council member represented the Union in its labor negotiations with the City.

Questions

[2] The Ethics Board understands your question to be:

What restrictions does the Ethics Code for local officials, §19.59, *Wisconsin Statutes*, place on the council member's participation in discussions and voting concerning the City's contract with the union?

Discussion

[3] Section 19.59, *Wisconsin Statutes*, generally prohibits a local public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for an organization with which the official is associated or (2) from taking any official action substantially affecting a matter in which an organization with which the official is associated has a

substantial financial interest.<sup>1</sup> A member of a city council is a local public official subject to §19.59.<sup>2</sup>

[4] Under the terms of the statute, an official is deemed associated with an organization if the official is an organization's "authorized representative or agent." §19.42(2), *Wisconsin Statutes*. In the present case, the city council member is an authorized bargaining agent for the Union and is, therefore, associated with that labor union. The only remaining questions are whether, in the circumstances presented, a union contract is a matter in which the Union can be said to have a substantial financial interest or is a thing of substantial value to the Union.<sup>3</sup> We believe both questions must be answered in the affirmative.

[5] Although it can be said that the Union's members, and not the Union itself, as a legal entity, is the primary beneficiary of a union contract, and the city council member at issue represents union members only in other municipalities, we nonetheless believe that the member's official involvement in Union contract decisions in the city would violate the provisions of the statute. First, it is our understanding that the labor contract at issue is executed between the City and the Union itself, not between the City and individual police officers. As such, the contract is a thing of value obtained by the union. Second, the Union, as a labor union, is the sum of its members.

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<sup>1</sup> Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

**19.59 Codes of ethics for local government officials, employees and candidates.** (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

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(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

<sup>2</sup> Under section 19.42(7u) (7w) and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective city office.

<sup>3</sup> Section 19.42(1), *Wisconsin Statutes*, provides:

**19.42 Definitions.** In this subchapter:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

It would seem an artificial construct to say that the union somehow does not benefit when its members are offered an acceptable union contract. Third, settlement of labor negotiations in one municipality can have an effect on similar negotiations elsewhere. Finally, it seems fair to say that successfully negotiating a labor contract in one municipality aids the Union in keeping or gaining new dues paying members. For all these reasons, we believe that a city council member who represents the Union in its labor negotiations on behalf of police force members in other municipalities should not use his or her official position to influence labor negotiations in the local governmental unit in which that individual holds an official position.<sup>4</sup>

[6] You have expressed a further concern that the city council member might use confidential information concerning the contract to benefit the Union in its negotiations with other municipalities. In our view, the prohibition on use of public office for private gain encompasses the use of information obtained through holding public office to benefit an organization with which the official is associated when the information is not available to the public. Once an official acquires confidential information that might be useful in the official's private endeavors, as a practical matter it seems hard for the official not to be affected by that information. To avoid the possibility of even an inadvertent use of confidential information in other negotiations, we believe the city council member should not be present during any portions of closed sessions in which labor negotiations with the Union are being discussed.<sup>5</sup>

#### Advice

[7] The Ethics Board advises that the member of a city council that is a negotiator for a labor union in other municipalities should not participate in any official discussions or vote on the union's contract with the city on whose council the member serves; should not use any information not available to the public, derived from the council member's holding public office, to benefit the union in other municipalities; and should not be present during closed sessions in which labor negotiations with the union are being discussed.

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<sup>4</sup> The fact that the city council member once represented the Association in negotiations with the City does not affect our analysis.

<sup>5</sup> Whether the City can require an official to leave a meeting if the official refuses to do so is a question beyond the Ethics Board's jurisdiction.